

May 17, 2010

Re: Case No. AP-76,100

STYLE: RAMIREZ, JOHN HENRY

The State's motion for extension of time within which to file the State's brief is granted. The time for filing the State's brief has been extended to **October 05, 2010**. NO FURTHER EXTENSIONS WILL BE ENTERTAINED. Failure to file State's brief may result in the issuance of a show cause order and/or judgment of contempt.

Louise Pearson, Clerk

DISTRICT ATTORNEY NUECES COUNTY  
CARLOS VALDEZ  
901 LEOPARD ROOM 206  
CORPUS CHRISTI TX 78401

No. AP-76,100

JOHN HENRY RAMIREZ, Appellant,

v.

THE STATE OF TEXAS, Appellee.

IN THE

COURT OF CRIMINAL APPEALS

OF TEXAS

FILED IN  
COURT OF CRIMINAL APPEALS

MAY 10 2010

MOTION FOR EXTENSION OF TIME TO FILE BRIEF

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Louise Pearson, Clerk

Comes now the State of Texas, by and through the District Attorney for the 105th Judicial District of Texas, and files this motion for an extension of one-hundred, eighty-one (180) days in which to file the State's brief. In support of this motion, the State shows the Court the following:

I.

Appellant was convicted in the 94th District Court of Nueces County, Texas, of the offense of capital murder in Cause No. 04-CR-3453-C and sentenced to death on December 8, 2008. Appeal to this Court is automatic. After a six-month extension, Appellant filed his brief on April 8, 2010.

II.

The deadline for filing the State's brief is May 10, 2010. The State has not requested any extensions prior to this request.

III.

The request for an extension is based upon the following facts:

The undersigned has been unable to begin work on the brief in this case because he has been unable to check out a copy of the appellate record. The district clerk's office has advised that one

copy of such record was sent to Appellant's appellate attorney and the other copy was sent to Appellant's writ attorney and that neither copy has been returned. The undersigned contacted Appellant's appellate attorney by phone, email, and postal mail, to ask that the record be returned (see attached) and has received a reply saying that such record would be shipped back to the clerk today. But, in the meantime, the deadline for filing the State's brief is imminent and the State has been unable to even begin reading the twenty-five volume record, let alone begin working on the brief.

And even when the record is available, the undersigned will need a considerable extension of time in which to file its brief in this case. The undersigned is one of four attorneys responsible for all of the appellate and post-conviction work in this office, as well as trial support for the entire felony and misdemeanor sections. As of today, each attorney is currently working on a brief or a writ and there are seven additional briefs, seven additional writ applications, a hearing on a motion to recuse a trial court judge on a post-conviction writ, and a response to a petition for writ of mandamus waiting to be done in addition to responding to the brief in this case, which numbers 123 pages, as well as all of the other briefs and writs that will continue to arrive.


Considering the afore-referenced delay in obtaining the record, the undersigned's and his colleagues' ongoing workload and briefing obligations, the length of the record in this case, and

the length and complexity of the brief in this case, the earliest the undersigned believes that the State's brief in this case can be prepared is one-hundred-eighty days from its present deadline. This estimate takes into consideration not only the thirty days that will have already been lost by not having access to the record but also the fact that the undersigned will be out of the office for nearly two weeks in May to attend his daughter's college graduation and his son's law school graduation in different states, and a week in early July to visit his brother in Iowa and attend his fortieth high school reunion. Additionally, the undersigned hopes to attend the Advanced Criminal Law Course during the last week of July. The undersigned believes he will need the remaining one-hundred, twenty days to read the record and prepare the brief in this case.

Appellant's appellate attorney called the undersigned this morning to say that he would not oppose such an extension.

WHEREFORE, the State prays the Court grant this motion and extend the deadline for filing the State's brief to October 5, 2010.

Respectfully submitted,

  
James D. Rosenkild  
State Bar No. 17279200  
Assistant District Attorney  
105th Judicial District of Texas  
901 Leopard, Room 206  
Corpus Christi, Texas 78401  
(361) 888-0410  
(361) 888-0399 (fax)

CERTIFICATE OF SERVICE

This is to certify that a copy of this motion was mailed this 5th day of May, 2010, to Appellant's attorney, Larry Warner, 2945 Jacaranda Dr., Harlingen, TX 78550-8658, and to his writ attorney, Michael Gross, 106 S. Saint Mary's St., Suite 260, San Antonio, TX 78205-3630.

  
James D. Rosenkild

OFFICE OF THE



DISTRICT ATTORNEY

901 LEOPARD, ROOM 206  
NUECES COUNTY COURTHOUSE  
CORPUS CHRISTI, TX 78401-3681

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**ANNA MARIA JIMENEZ**  
DISTRICT ATTORNEY  
105<sup>TH</sup> JUDICIAL DISTRICT  
NUECES COUNTY

FACSIMILE  
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361-888-0700 MISDEMEANOR DIVISION  
361-888-0381 VICTIM ADVOCATE

May 4, 2010

Larry Warner, Esq.  
2945 Jacaranda Dr.  
Harlingen, TX 78550

Re: Ramirez v. State,  
No. AP-76,00  
(Ct. of Crim. Appeals of Tex.)

Dear Mr. Warner:

This is to memorialize the message we left with your answering service today. We are in receipt of your brief in the John Henry Ramirez death penalty case. The Court of Criminal Appeals website indicates that it was filed on April 8, 2010, which would make the State's brief due on May 10, 2010. However, we have been unable to begin work on such brief because we have been unable to check out the appellate record. The Nueces County District Clerk's office advises that one copy of the record was sent to you (C.R. on 7-17-09; Suppl. C.R. on 8-12-09; and R.R. on 10-22-09) and that one copy was sent to Michael Gross, the writ attorney (C.R., Suppl. C.R., and R.R. on 10-28-09). Since you have now filed your brief and I assume Mr. Gross is still working on the writ application and needs the copy of the appellate record that he checked out, would you please return the copy you checked out from the district clerk to that office as soon as possible so that we may check it out and begin reading the record in order to prepare the State's brief.

Thank you.

Respectfully,

  
James D. Rosenkild  
Ass't District Attorney